

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

v.

ORLANDO LOPEZ,

Defendant.

* * * * *

Case No. 20-CR-0052 (EK)

Brooklyn, New York

April 8, 2022

TRANSCRIPT OF CRIMINAL CAUSE FOR SENTENCING
BEFORE THE HONORABLE EDWARD R. KOMITTEE
UNITED STATES DISTRICT JUDGE

APPEARANCES:

For the Government:

TANYA HAJJAR, ESQ.
Asst. United States Attorney
United States Attorney's Office
271 Cadman Plaza
Brooklyn, NY 11201

For the Defendant:

MICHELLE A. GELERNT, ESQ.
Federal Defenders of New York
One Pierrepont Plaza, 16th FL
Brooklyn, NY 11201

Proceedings recorded by electronic sound recording,
transcript produced by transcription service.

Fiore Reporting and Transcription Service, Inc.
4 Research Drive, Suite 402
Shelton, Connecticut 06484 (203)929-9992

1 (Proceedings commenced at 2:37 p.m.)

2 THE CLERK: Criminal cause for sentencing, the
3 United States of America versus Orlando Lopez, docket number
4 20CR52. Would you all please state your appearances for the
5 record, starting with the government?

6 MS. HAJJAR: Good afternoon, Your Honor. Tonya
7 Hajjar for the government. I'm jointed by Special Agent
8 Aaron Steeva (ph) of the FBI and Jennifer Fisher of the
9 United States Probation Department.

10 MS. GELERNT: Good afternoon, Your Honor.

11 THE COURT: Good afternoon. You can all stay
12 seated while speaking. The important thing is that we're
13 close enough to the microphones here for the sound recording,
14 but good afternoon.

15 MS. GELERNT: Good afternoon, Your Honor. Federal
16 Defenders by Michelle Gelernt -- G-E-L-E-R-N-T, along with
17 Elba Torres Perez of the Federal Defenders, a mitigation
18 specialist and seated also at counsel table with Mr. Lopez.

19 THE COURT: Good afternoon.

20 Okay. So we are --

21 THE CLERK: I'm sorry, Judge, we're joined by in-
22 house Spanish interpreter Mario Michelena, previously sworn.

23 THE INTERPRETER: Good afternoon, Judge.

24 THE COURT: Good afternoon. All right. We are
25 here for sentencing in this case as you all know. We are, as

1 Ms. Guy just noted, proceeding with the assistance of an
2 interpreter.

3 Mr. Lopez, it's important that you understand
4 everything that is said here today, and if you need anything
5 repeated or re-translated, please don't hesitate to speak up
6 at any point and let us know that you missed something and we
7 will make sure to repeat whatever is needed.

8 THE DEFENDANT: Thank you, Judge.

9 THE COURT: Okay. So Mr. Lopez pleaded guilty
10 before me in this case to ten counts in the indictment. And
11 let me invite the government to speak up if I get anything
12 wrong here.

13 This is a relatively complicated set of counts and
14 guidelines calculations and statutory provisions and the
15 like, and so as always, I invite feedback.

16 The counts of Mr. Lopez's conviction are counts 2,
17 4, 5, 6, 7, 8, 9, 10, 11, and 12. That is all of the counts
18 in the indictment except for counts 1 and 3, correct?

19 MS. HAJJAR: That's correct, Your Honor.

20 THE COURT: Okay. And just for the sake of the
21 clarity of the audio recording, I'm going to remove my mask.
22 I'm up here behind the plexiglass and fully vaccinated. If
23 anybody else wants to do the same, let me know and we'll talk
24 about where you're seated and who you're seated next to and
25 whether that's appropriate.

1 Let me remark as we begin that it was important to
2 me and to the parties at the guilty plea proceeding to make
3 sure that the record was clear that when we talked about the
4 victims in this case by reference to their pseudonyms, that
5 we knew that we were all on the same page as to which victim
6 we were talking about in connection with which count.

7 That is, of course, important again today and so at
8 my request the government has provided a chart that sets
9 forth in a series of columns the pseudonym by which each
10 victim is referred to in the indictment and other operative
11 documents, the true name of that victim, their date of birth
12 to the extent it's known, their age at the time that they
13 were victimized by the relevant crime of conviction, the
14 number of images of them recovered in the forensic analysis
15 here, and the number of videos to the extent we're talking
16 about video evidence.

17 And for obvious reasons relating to the
18 confidentiality of the victims identities, I'm going to ask
19 the defense to return their copy of this document after
20 today's proceeding to the government for shredding.

21 I know the defense already knows the identities of
22 these victims, I just don't want these pieces of paper
23 floating around, but I will mark for identification, my copy
24 of this chart as Court's Exhibit 1.

25 MS. GELERNT: Your Honor, just regarding, that,

1 I've had conversations with government counsel and as the
2 court is aware, there is a state case unrelated charges and
3 I've sought to be able to provide this chart to state court
4 counsel upon state court counsel's execution of the
5 protective order that exists in this case. And government
6 counsel indicated that that was acceptable.

7 I think it's important that the counsel in the
8 state case as well as the judge in the state case understand
9 exactly what conduct Mr. Lopez was convicted of here since
10 there is overlapping conduct and overlapping victims in the
11 state matter.

12 THE COURT: Yeah, I see the interest obviously in
13 the state court for double jeopardy or other purposes
14 understanding what conduct Mr. Lopez was convicted of in
15 connection with what counts in this case.

16 I had not considered wider distribution than just
17 those of us gathered here today, and so I think my position
18 now is that it's fine with me if it's fine with the
19 government. But if you want to be heard further on that, let
20 me know.

21 MS. HAJJAR: Yes, Your Honor.

22 I just indicated to Ms. Gelernt that I would prefer
23 if defense counsel in the state court proceeding assignee to
24 the protective order Your Honor has entered. There is room
25 for the option should defense counsel wish to share

1 information produced pursuant to the protective order.

2 So we'd just ask defense counsel to have state
3 defense counsel sign on formally so that he is subject to the
4 strictures of the protective order in this case.

5 THE COURT: Right. And presumable a copy of his
6 signature page for the agreement transmitted to the
7 government before the --

8 MS. HAJJAR: Disclosure.

9 THE COURT: -- disclosure occurs.

10 MS. HAJJAR: Yes, Your Honor.

11 THE COURT: Okay. I think we're all on the same
12 page there.

13 Okay. So Mr. Lopez, let me before we formally
14 begin here, just explain the process for today's proceeding.

15 First, I will say a word about the crimes of
16 conviction, what counts relate to what statutes.

17 Second, I want to list on the record every
18 submission that I have received and considered in preparation
19 for today.

20 The purpose of that is to make sure that I have
21 received everything the parties think I should have and that
22 we're all working off the same information.

23 Next, we will discuss the pre-sentence report put
24 together by the Probation Department as well as the addendum
25 to that report and I know that there have been objections

1 along the way from the defense. We'll talk about those as
2 well. And when I say the pre-sentence report in the context,
3 I'm talking about the narrative recitations of the pre-
4 sentence report.

5 We will also go over the guidelines calculation in
6 the PSR. I think you know from your guilty plea hearing,
7 that the United States Sentencing Guidelines are now
8 advisory, meaning that I am not obligated to sentence within
9 the guidelines range.

10 Nevertheless, it is still my obligation to
11 determine what the guidelines range is and to consider the
12 guidelines before imposing sentence, as well as any
13 departures from the guidelines that might apply.

14 After that, after we all have agreement on what the
15 guidelines range is for the offenses in this case, I will
16 give the attorneys an opportunity to make any arguments they
17 wish to make and following that, Mr. Lopez, you will have the
18 right, but not the obligation, to make a statement to the
19 court if you wish before I impose a sentence.

20 Once all of that has happened, I will most likely
21 take a ten minute break to collect my thoughts and then we
22 reconvene, I will review what we call the section 3553(a)
23 factors.

24 Those are the factors that congress in federal
25 sentencing law has required me to consider in order to

1 determine the appropriate sentence in this case. They
2 include things like the personal history of the defendant,
3 the offense conduct at issue and other factors that we will
4 discuss.

5 After reviewing those factors, I will impose
6 sentence. Mr. Lopez, do you understand the process I've laid
7 out here?

8 THE DEFENDANT: Yes, Your Honor.

9 THE COURT: Okay. Does the government -- I have
10 the government's submission that includes various victim
11 impact statements.

12 Is there anybody the government has with you in the
13 courtroom asking to be heard live today?

14 MS. HAJJAR: No, Your Honor. I will just say that
15 one victim family member has asked me to read a portion of
16 the statement that was submitted that was already submitted
17 to Your Honor. With your permission I will do so, but
18 otherwise, I don't expect the victim will be here today to
19 address the court today.

20 THE COURT: Okay. Yes, I will be happy to give you
21 that opportunity.

22 So turning to the guilty plea, the crimes of
23 conviction here, Mr. Lopez pleaded guilty before me on July
24 26th of last year to the counts I mentioned before.

25 Count 2 charged sexual exploitation of a child on

1 March 10th of 2011. Count 4 charges the same on February 5th
2 -- excuse me, February 15th of 2012. Count 5 the same sexual
3 exploitation of a child on June 24th, 2013. Count 6, the
4 same on May 12th, 2015. Count 7, the same on July 29th,
5 2017. Count 8, the same on August 9th, 2017. Count 9, the
6 same on March 23rd, 2018. Count 10, the same on August 2nd,
7 2019. Count 11, the same on August 21st, 2019.

8 So those are nine counts alleging sexual
9 exploitation of various children beginning with count 2 in
10 2011 and continuing through count 11 in 2019.

11 Count 12, to which Mr. Lopez also pleaded guilty,
12 charged possession of child pornography.

13 The sexual exploitation charges that I listed,
14 relate to violations of 18 U.S. Code, Section 2251 and the
15 last count of possession of child pornography a violation of
16 18 U.S. Code, Section 2252.

17 And I'll talk in a bit about the minimum and
18 maximum punishments associated with each of those provisions.

19 In terms of the documents in my possession, I have
20 the pre-sentence report filed on January 4th, 2022, the
21 Probation Department's initial sentence recommendation dated
22 January 4th, and a revised sentence recommendation also from
23 the probation department, dated March 23rd.

24 Does the defense have the Probation Department's
25 sentence recommendations?

1 MS. GELERNT: Your Honor, I believe, I'm not sure
2 that I received the second recommendation. I received an
3 addendum, but I don't know if there's a second document.

4 THE COURT: Okay. It is my practice to put the
5 recommendations from the Probation Department on the record
6 at sentencing. I do that because even though, of course,
7 those recommendations are not binding on me, they are
8 important in my thought process.

9 The Probation Department sees every defendant
10 sentenced in this district and they have more context
11 regarding the way court sentences various defendants for
12 various crimes than any individual judge in this building
13 does and because I consider that recommendation, I think it's
14 only fair that I share it with the parties and I will do so
15 today.

16 There is an addendum to the PSR that Ms. Gelernt
17 just mentioned, dated March 18th, 2022. That was dealing
18 with a purported 1997 conviction and 30 month sentence, 3-0
19 month sentence in Columbia.

20 It dealt with a guilty plea that was entered and
21 then vacated in New York State Court that dealt with some of
22 the conduct either charged in or overlapping with this case
23 and we'll talk about that a little bit as well. And it
24 contained an employment history update regarding Mr. Lopez.

25 I have the defendant's sentencing memorandum dated

1 March 11th, 2022. I have the government's memorandum dated
2 March 25th, 2022, and I have one document containing a series
3 of victim impact statements provided by the government. I
4 don't think that that document has a date on it, but it is
5 five pages long.

6 Is that all the victim impact statements I should
7 have in this case?

8 MS. HAJJAR: Yes, Your Honor.

9 THE COURT: Okay. Is there anything else from the
10 government's perspective that I should have?

11 MS. HAJJAR: No. Thank you, Your Honor.

12 THE COURT: Anything else from the defense
13 perspective?

14 MS. GELERNT: No, Your Honor. Thank you.

15 THE COURT: Okay. All right. So we are all
16 working off the same information here.

17 Ms. Gelernt, have you and your client read and
18 discussed the pre-sentence report in this case?

19 MS. GELERNT: We have, Your Honor.

20 THE COURT: And have you had a sufficient
21 opportunity to discuss any issues?

22 MS. GELERNT: Yes, Your Honor.

23 THE COURT: Putting aside the guidelines
24 calculations, do you have any unresolved objections to the
25 PSR at this point?

1 MS. GELERNT: No, Your Honor. I think Probation
2 has responded. Whether or not we're in agreement regarding
3 the factual dispute, is a separate matter. But I don't think
4 there's anything else that hasn't been addressed.

5 THE COURT: Okay. So no factual disputes that
6 you're looking for me to resolve with respect to the
7 guidelines?

8 MS. GELERNT: No, Your Honor.

9 THE COURT: All right. I will say in respect of
10 Probation's reference to a 1997 conviction on corruption
11 charges in Columbia, it does seem odd to me that it's
12 possible that that could happen and the defendant not
13 remember serving 30 months incarceration for corruption, but
14 I don't believe I need to resolve that because it will not
15 affect my views on sentencing here today one way or the
16 other.

17 MS. GELERNT: Your Honor, I guess I should clarify.
18 I believe originally in the pre-sentence report it didn't
19 necessarily specify the sentencing. There was an issue when
20 Mr. Lopez was in (phone ringing) -- I apologize --

21 THE COURT: That's okay.

22 MS. GELERNT: -- when Mr. Lopez was in Columbia
23 where his identification was stolen and where there was an
24 ongoing issue about that. But I don't want to -- we're not
25 asking for a *Fatico* hearing on that. Given that it's over 25

1 years ago and the court has already indicated that it doesn't
2 intend to factor that into it's sentencing analysis here, I
3 don't think it is wise to belabor it.

4 THE COURT: Yeah, I confirm, it's irrelevant to the
5 determination on sentencing that I will make today.

6 MS. GELERNT: Thank you, Your Honor.

7 THE COURT: Okay. And I take it neither party is
8 seeking an evidentiary hearing on any issue?

9 MS. GELERNT: No, Your Honor.

10 MS. HAJJAR: That's correct, Your Honor.

11 THE COURT: Okay. All right. Turning then to the
12 sentencing guidelines. Are we all in agreement that the
13 sentencing guidelines calculation laid out in the
14 government's sentencing submission is the correct one?

15 You lay out in your sentencing submission a count
16 by count application of the sentencing guidelines. You then
17 total them, the total and the aggregation analysis yield a
18 guidelines range of life, which is not really a range.

19 We all agree I think that no individual count of
20 conviction permits a life sentence on that one count and,
21 therefore, the guidelines are largely beside the point here
22 today even though, of course, I will consider them on a count
23 by count basis.

24 But just in terms of whether the individual
25 calculations for each count are accurate, I take it we don't

1 have a dispute over the submission that the government made,
2 is that correct?

3 MS. HAJJAR: Really not from the government. This
4 calculation differs slightly from the calculation that was
5 set forth in the plea agreement, but the government agrees
6 with Probation's analysis and believes the base offense level
7 of 51, that's taking into account all the grouping analysis
8 and the way the guidelines work for multiple victims is
9 correct.

10 So that leads us -- that's off the charts, that
11 leads us to a 43 offense level which corresponds to a
12 guidelines term of life imprisonment.

13 THE COURT: Okay. Ms. Gelernt, do you agree with
14 that assessment?

15 MS. GELERNT: Yes, Your Honor, but I think as the
16 court pointed out, essentially because the guidelines are at
17 life and none of the statutes of conviction carry a
18 possibility of an actual life sentence, the effective
19 guideline range becomes multiples of the maximums for each
20 count of conviction which I think is how probation analyzed
21 it, if that makes sense.

22 THE COURT: Okay. I think we're all on the same
23 page.

24 MS. GELERNT: Correct.

25 THE COURT: And I think one implication of us all

1 being on the same page is that we don't have to go through
2 the guidelines calculation for any count to resolve any
3 disputes about how the guidelines would apply to that count
4 individually, correct?

5 MS. GELERNT: Correct, Your Honor.

6 MS. HAJJAR: That's correct, Your Honor.

7 THE COURT: Okay. All right. So is there anything
8 Probation wants to add on that subject? I'm not sure anything
9 is necessary, but let me just give you the opportunity?

10 THE PROBATION DEPARTMENT: No, Your Honor, that's
11 accurate. Thank you.

12 THE COURT: Thank you. Okay. So we mentioned that
13 the guidelines, as well, the defendant is in criminal history
14 category 1, that's predicated on a criminal history score of
15 zero points. The guidelines range for each offense we just
16 took up. The guidelines range for supervised release is five
17 years per count, correct?

18 MS. HAJJAR: A minimum of five years, so yes, the
19 guideline range would be five year to life on each count.

20 THE COURT: Right. And we'll talk about the
21 statute in a minute as it relates to the supervised release.

22 Probation's recommendation was initially that on
23 count 2 and counts 4 through 11, I sentence the defendant to
24 50 years, 5-0, in the custody of the attorney general on each
25 count, all to run concurrently. That was predicated on

1 Probation's original understanding of the statutory maximum
2 which apply to higher statutory maximum in recognition of the
3 state court conviction for sexual exploitation that relates
4 to some of the same conduct in this case.

5 I think everybody now acknowledges that that
6 conviction has been vacated and, therefore, should not affect
7 the statutory maximum and in recognition of that agreement,
8 Probation's revised sentence recommendation recommends that
9 on count 2 I sentence Mr. Lopez to 20 years in the custody of
10 the attorney general to run consecutively to all other counts
11 and that on counts 4 through 11, Mr. Lopez be sentenced to 30
12 years in the custody of the attorney general. Those counts 4
13 through 11 to run concurrently to each other and to count 12,
14 but consecutively to the 20 years in count 2.

15 So essentially a 50 year total for counts 2 through
16 11 -- or 2 and 4 through 11. And on count 12, five years in
17 the custody of the attorney general to run consecutively to
18 the sentence on count 2 and concurrently to counts 4 through
19 11. And so I think when you stack those, if I
20 understand what Probation is doing, you end up with a total
21 sentence of 50 years. Is that correct?

22 THE PROBATION DEPARTMENT: That is correct, Your
23 Honor. Our position really is that although the statutory
24 requirements have changed, the underlying facts of the case
25 have not. So our actual recommendation remains unchanged.

1 We just had to sort of change the mechanisms of how we
2 recommend you impose it.

3 THE COURT: Understood. Probation also recommends
4 five years supervised release on each count all to run
5 concurrently and a number of special conditions of supervised
6 release that we will talk about later in this proceeding.

7 Okay. So in terms of the statutory provisions,
8 we've talked a little bit already, we all agree now that on
9 count 2 and counts 4 through 11, the mandatory statutory
10 minimum is 15 years, 1-5, for each of those counts and
11 there's a maximum -- statutory maximum of 30, 3-0, years on
12 each of those counts under 18 U.S. Code, Section 2251(e).

13 Count 12, the child pornography count has no
14 mandatory minimum and a statutory maximum penalty of ten
15 years under 18 U.S. Code, Sections 2252(a)(4)(b) and (b)(2).

16 The maximum fine by statute is \$250,000 on each
17 count under 18 U.S. Code, Section 3571(b) and in addition to
18 the mandatory \$100 special assessment on each count, which is
19 \$1,000 total special assessment under 18 U.S. Code, Section
20 3013, there are statutory -- specific statutory special
21 assessments in the statutes of conviction in this case that
22 we will also consider later.

23 The Justice for Victims of Trafficking Act of 2015
24 calls for an assessment of \$5,000 per count on any non-
25 indigent person who's convicted of the crimes at issue here,

1 I believe.

2 And on Count 12, the government is going to correct
3 me if I'm getting any of this wrong, on count 12 the
4 defendant is subject to the provisions of the Amy, Vicky, and
5 Andy Child Pornography Victim Assistance Act of 2018 which
6 provides that in addition to other special assessments
7 authorized by law, I shall assess not more than \$17,000.

8 Additionally, under 18 U.S. Code, Section 2254 -- excuse
9 me, 2252(a)(4) and not more than \$35,000. And to the extent
10 the offense involves the production of child pornography, the
11 special assessment can be as high as \$50,000.

12 I think the special assessment provisions that I'm
13 talking about now may be academic in this case, given the
14 fact that Mr. Lopez has no assets to speak of according to
15 the pre-sentence report and obviously given the priority of
16 restitution to the victims over any special assessment that
17 would be paid to the government. Is that correct?

18 So we will impose, of course, the mandatory \$100
19 special assessment for each of the ten counts of conviction.

20 Are any of the other special assessments that I've
21 just discussed mandatory by operation of statute or does the
22 indigence remove the obligation to impose those assessments?

23 MS. HAJJAR: If I could just have one moment to
24 confer with Probation, Your Honor?

25 THE COURT: Yeah, please.

1 MS. HAJJAR: Your Honor, I wanted to confirm with
2 Probation about the TVPA's \$5,000 assessment. I was under
3 the impression it was mandatory, but as Probation points out
4 in the PSR, this is paragraph 171, it is the court shall
5 assess an amount of \$5,000 on any non-indigent party.

6 And so with the court's finding that Mr. Lopez is
7 indigent, given what's in the PSR, I think the only mandatory
8 assessments are the \$100 per count.

9 THE COURT: Okay. So there will be \$1,000 total of
10 special assessments imposed as part of sentence here and the
11 additional statutory assessments, Mr. Lopez will not be
12 subject to, given the indigence finding and the restitution
13 that we're contemplating.

14 MS. HAJJAR: That's correct, Your Honor.

15 THE COURT: Okay. And then turning to restitution,
16 my high level question here is whether we are going to
17 resolve the restitution issue today or whether we should use
18 the 90 days that are accorded to us by statute, to make sure
19 we have everything we're going to get on restitution.

20 My instinct is the latter, that we should see if
21 anything else comes -- I know you've made attempts to reach
22 out to other victims. It's possible that other victims will
23 reach out to you, especially if there's some publicity
24 associated with today's proceeding. I don't know. It seems
25 to me there's no reason to resolve restitution today and we

1 can take it up sometime in the next three months.

2 MS. HAJJAR: That's right, Your Honor. I would say
3 the court could order the \$24,000 that is currently requested
4 by the victims of the possession of child pornography that
5 was based on the request previously submitted by those
6 victims.

7 The government has not yet received restitution
8 requests from the victims of the production counts. I would
9 ask that the court leave open the possibility of so imposing
10 such restitution orders within the next 90 days so that if
11 victims were to put forward restitution requests, we could
12 convey those to counsel and the court.

13 THE COURT: Okay. So this is the -- there are one,
14 two, three, four, five, six, seven -- seven victims
15 identified by pseudonyms as victims depicted in series of
16 child pornography that are identified as Blues Pink 1,
17 Cinderblock Blue, Jenny, Jessica, Misty and the last series
18 identifier is all one word, Teal&pinkprincess2, is that who
19 we're talking about here?

20 MS. HAJJAR: Yes. I believe it's eight -- I have
21 it as eight victims if that's not correct. I think that's
22 based on victim Tara that's referred to in paragraph 44 and
23 that is included in the \$24,000. Probation calculated \$3,000
24 for each victim.

25 THE COURT: Oh, I see. And does Tara need to be

1 associated with a particular series?

2 MS. HAJJAR: That is a series, Your Honor. I think
3 it's a Tara series.

4 THE COURT: Oh, okay.

5 THE PROBATION DEPARTMENT: That's correct, Your
6 Honor.

7 THE COURT: And, I'm sorry, remind me of what
8 paragraph in the PSR you just said?

9 MS. HAJJAR: It's paragraph 44. Probation notes
10 that the victim depicted in the Tara series also included a
11 claim to restitution. And so has asked for restitution in
12 connection with that victim as well.

13 THE COURT: Okay. And Ms. Gelernt, if I were to
14 proceed in that fashion, specifically by ordering restitution
15 today in those amounts for those eight victims and then to
16 the extent any other victims are identified, we take that up
17 at some point in the next 90 days, is that something the
18 defense wants to be heard on? I think you -- is there an
19 agreement on restitution?

20 MS. GELERNT: Your Honor, I don't think that we're
21 going to challenge restitution at this point. I think at
22 some point it's somewhat academic given the likely sentence
23 for Mr. Lopez and his inability to pay.

24 I think what we're really talking about is a
25 portion of his commissary being conscripted while he's in.

1 So I don't have an objection. I know that *Paroline* asked the
2 court to actually consider whether or not victims are
3 obtaining restitution sort of endlessly that's going beyond
4 what actually serves as restitution, but we're not going to
5 objection if the court proceeds in that way.

6 THE COURT: Was that a case name that you just
7 invoked?

8 MS. GELERNT: Yeah.

9 THE COURT: Spell it for me?

10 MS. GELERNT: P-A-R-O-L-I-N-E, it's the case that
11 stands for the proposition that restitution must be related -
12 - proximately related to the harms caused by each individual
13 victim and so in the government's view and in Probation's
14 view, I believe, these \$3,000 amounts per victim do represent
15 what was the harm that was proximately caused to that
16 particular victim based on the number of images possessed by
17 the defendant.

18 The actual damages each of those victims have asked
19 for are far in excess of -- in total, I mean, of all
20 offenders possessing images of course, far in excess of the
21 amount requested for each individual offender.

22 THE COURT: Right. And if the numbers are fixed
23 today, I don't understand how we have the issue that defense
24 counsel invoked about restitution being paid in perpetuity.
25 It's only going to be paid in perpetuity to the extent it

1 just hasn't been paid off. But it's not a moving target --

2 MS. GELERNT: No, no. I'm sorry, and perhaps I
3 shouldn't have said anything since we're not going to
4 actually object.

5 The idea or one of the ideas behind it is if at a
6 certain point if there is -- since restitution has to be
7 linked to actual harm and causation, if there are numerous
8 and numerous defendants each paying \$3,000 as it actually
9 serving to go towards the causation of harm or at some point
10 has the victim been compensated for the harm, is the idea.
11 So if he harm -- I mean it's hard to ever associate a dollar
12 amount with the harm that he's caused --

13 THE COURT: Right.

14 MS. GELERNT: -- but if he were to pay --

15 THE COURT: But from a theoretical perspective,
16 isn't it the case that each viewing is a new instance of harm
17 at least arguably?

18 MS. GELERNT: That's the government's perspective
19 at a certain point and nobody actually ever and I think there
20 are much greater issues here today and I know Mr. Lopez is,
21 you know, extremely anxious to just move forward.

22 The idea is if somebody had assessed that the
23 victim should receive a million dollars in pain and suffering
24 for the damage that was caused, at a certain point if nobody
25 is looking at how many people have been ordered to pay \$3,000

1 or \$5,000 in restitution, it can actually, the individual
2 restitution amounts can actually total more than the amount
3 of damage, was part of the idea.

4 Nobody is actually looking at itemizing what was
5 the harm caused through any sort of actuarial analysis. But
6 we're not objecting, we're not going to take the position,
7 and by the terms of our plea agreement, we agreed to the
8 guidelines range on -- and things like that.

9 But so this is sort of -- while it's significant,
10 it's the least significant affect of the sentence the court
11 will impose today on Mr. Lopez, so I don't want to belabor it
12 more than I already have probably unnecessarily.

13 THE COURT: Okay. No, it's fine. But so where we
14 are coming out on this is that to the extent I'll be ordering
15 \$24,000 in restitution to those eight victims today, there is
16 no objection.

17 MS. GELERT: There is no objection. That's
18 correct.

19 THE COURT: Okay.

20 MS. GELERT: And we would just ask that when there
21 are -- if there are additional claims, we receive notice of
22 that in case there is some objection to it.

23 THE COURT: Understood. Okay. So that takes us
24 through the PSR, the application of the guidelines and the
25 statutory punishment provisions at issue.

1 As I mentioned earlier, I have reviewed the parties
2 written sentencing submissions which I thought were very
3 comprehensive all around.

4 Ms. Galernt, do you wish to be heard further at
5 this time?

6 MS. GELERNT: Yes, Your Honor. Thank you. As the
7 court is aware by terms of our plea agreement, we're
8 constrained not to request a downward variance below 25 years
9 however the court were to arrive at that number.

10 And for the purposes of this application, I'm just
11 going to talk about the sentence in terms of an aggregate
12 number rather than specifically as to each count because I
13 think that's really at the heart of the matter, what the
14 total sentence will be.

15 I know that the court is aware that it has the
16 power to sentence Mr. Lopez to a minimum of 15 years. The
17 government has requested a life sentence and I believe the
18 total maximum sentence in this case given what everybody has
19 agreed on, on the maximum penalties, is I believe 280 years,
20 If I'm calculating correctly.

21 But given Mr. Lopez's age, there is a fact that
22 even a mandatory minimum sentence could end up being a life
23 sentence. He's 66 years old now and even a 15 year sentence
24 would result in him being incarcerated until he's about 80.

25 The first point that we addressed in our sentencing

1 memorandum, was Mr. Lopez's acceptance of responsibility.
2 And we submitted to the court that Mr. Lopez has actually
3 shown an extraordinary acceptance of responsibility in this
4 case, and actually not just in this case, but in the state
5 case as well.

6 As the court is aware, in that case Mr. Lopez
7 actually waived a grand jury presentation and pled guilty
8 rather quickly to a sentence that -- the promised sentence
9 was 19 years.

10 And here Mr. Lopez accepted a plea agreement where
11 he couldn't ask for less than 25 years meaning the earliest
12 he would have hoped to be released would at approximately 90.
13 With the understanding that if the court were to impose a
14 sentence well in excess of life, he would be constrained and
15 not be permitted to appeal.

16 So I do think that shows an extraordinary
17 acceptance of responsibility on his part and I don't think
18 the fact that through the advice of counsel, he vacated the
19 state court pleas which were interrelated, negates that.

20 This was a very difficult choice even for me as an
21 attorney to advise somebody to accept a plea knowing that the
22 government would come in and ask for the equivalent of a life
23 sentence and knowing that given the nature of the crimes, the
24 court might find itself wrestling with that.

25 I think Mr. Lopez's acceptance of responsibility

1 warrants a downward variance not just because it's about him
2 and his reflection on the seriousness of the crime, but also
3 because of what it says to other similarly situated
4 defendants and defense counsel.

5 I think one of the concepts we're familiar with in
6 this courthouse when we're dealing with something that I
7 would suggest is somewhat analogous to this situation is
8 cooperators who are being sentenced pursuant to 5K motions
9 where the government is asking for downward departures from
10 statutory minimums, mandatory minimums, or from guidelines
11 ranges.

12 And one of the reasons the court grants a downward
13 variance or downward departure in that circumstance, is not
14 just because of that the defendant in that situation should
15 receive a benefit from being willing to come forward and
16 assist the government, but that it would encourage other
17 people to do so as well in the future with the understanding
18 that justice is administered more fairly or more equitably
19 when more people are willing to cooperate.

20 I think that's true for these types of cases. Mr.
21 Lopez by his plea, has spared the victims from going through
22 a protracted trial.

23 If we, as Your Honor just referenced, agree that
24 every viewing of child pornography is an additional harm, Mr.
25 Lopez has spared the victims in this case, the additional

1 harms that would come from the child pornography being played
2 again for members of the community and jurors and sitting
3 through that trial.

4 So I think that in and of itself is worthy of a
5 downward variance, but I also think it's important that
6 similarly situated defendants understand that there is some
7 benefit to accepting responsibility to pleading guilty even
8 when the best they can hope for, may be the equivalent of a
9 life sentence for Mr. Lopez.

10 So somebody else making this choice might also see
11 that the court was aware that they spared the victims harm
12 and did actually show compassion or adjust their sentence
13 accordingly and it might encourage future defendants and
14 certainly future defense counsel to advise their clients to
15 take a plea as well in this situation.

16 I think one of the things we grappled with or I
17 grappled with in trying to discuss what an appropriate
18 sentence is for the court, is that in no way do we want to
19 diminish the serious nature of the crimes here, or what the
20 victims suffered.

21 I think there is no way to diminish that, there's
22 no way to minimize the seriousness of the conduct especially
23 protracted harm that occurred over many years.

24 That being said, the seriousness of the offense and
25 the need for punishment are not the only matters the court

1 has to consider.

2 I also do want to emphasize as I did in my
3 submission, that in this case there is a practical difference
4 between, and a real life difference, between sentencing Mr.
5 Lopez to the maximum or 280 years as the government will ask
6 for, since a life term is not available, and sentencing Mr.
7 Lopez to a number that may actually turn out to be the
8 equivalent of his natural life, but is say the 25 years we're
9 constrained to ask for.

10 And we discussed one of those differences in our
11 submission and that is that the way the bureau of prisons
12 structures designations is that if the court were to give Mr.
13 Lopez a sentence of say 100 years or 200 years, he would be
14 designated to a maximum security facility according to BOP
15 regulations.

16 I think the parties may dispute whether or not Mr.
17 Lopez would be a danger released to the community in terms of
18 even if he were 80 or 90 years old, but I don't think there
19 can be any real dispute that while incarcerated he presents
20 no danger.

21 He's been incarcerated now actually since October
22 of 2019 because he was originally arrested in the state and
23 he was brought into federal custody in February of 2020,
24 shortly before the onset of the pandemic.

25 So he's now been incarcerated at the MDC for over

1 two years without incurring any type of disciplinary
2 infraction. He's one of the few detainees who actually found
3 some productive programming to participate in.

4 So I don't think anybody really has a concern that
5 while incarcerated, Mr. Lopez presents a danger such that it
6 would be necessary to house him in one of the most secure
7 facilities available.

8 I also discussed that one of the other factors the
9 court has to consider is the need for educational,
10 vocational, or correctional treatment.

11 I think in these types of cases what we often talk
12 about in terms of the need for correctional treatment, is sex
13 offender treatment while in custody.

14 In my research the only facility that offered that
15 as a high security facility, was the facility in Tucson which
16 would cause substantial hardship to not only Mr. Lopez, but
17 his family.

18 As the court is aware he has family local here in
19 addition to the family in Queens who would be unable to visit
20 him if he were designated to Tucson.

21 We are going to ask that the court designate Mr.
22 Lopez or recommend the designation to Butner in North
23 Carolina which is actually -- it has a medical facility which
24 can treat not only Mr. Lopez's current medical needs, but the
25 reality of somebody aging in prison is that they're likely to

1 have increased medical needs and Butner has not only a sex
2 offender treatment program, but it's attached to a federal
3 medical center and there's a minimum and medium facility all
4 within the same complex of prisons. So we do believe that
5 would be appropriate.

6 So I think the need for correctional treatment some
7 place where his family could visit, also mitigates in favor
8 of sentencing Mr. Lopez to something more in the range of
9 what we are constrained to ask for.

10 The other issue in terms of sentencing him to
11 hundreds of years or 50 years, is that Mr. Lopez will have no
12 ability to be stepped down from levels of security.

13 So as we noted in our sentencing submission, if
14 somebody is a deportable, non-citizen, the security factors
15 can't be waived.

16 And you have to have under 30 years left on a
17 sentence to get moved from a maximum to a medium and then
18 under 20 years to get moved to a low level facility.

19 So with a sentence of the nature that the
20 government will ask for even that Probation is going to ask
21 for, it is unlikely that Mr. Lopez would ever even find
22 himself at the time frame where he could be stepped down in
23 the levels of security.

24 If he were to be sentenced to 50 years say, he
25 would have to serve approximately 20 years before he could be

1 stepped down to a lower level facility.

2 So I think that also weighs of favor of sentencing
3 Mr. Lopez to a sentence that would still be significant, may
4 in fact result in a life sentence, but would allow him to be
5 properly designated in a facility where he can get treatment
6 not only for what is obviously a very severe issue, a mental
7 health issue, but also would provide him with the necessary
8 medical treatment going forward.

9 You know, there's the sort of an old Dostoevsky
10 quote that says that you can judge the degree of the
11 civilization in a society by entering its prisons and I think
12 anybody having entered the MDC during the last two years,
13 would certainly have questions about that.

14 Not just because of the punitive nature of the lock
15 downs, but sort of the ill repair and under staffing that's
16 gone on partly as a result of the pandemic, but partly as a
17 result of systemic issues that have occurred in the bureau of
18 prisons.

19 Though we certainly understand that Mr. Lopez has
20 not come close to beginning to serve what is an appropriate
21 sentence in this case, I think it should be acknowledged that
22 the last two and a half years have been extremely harsh in
23 terms of the excessive lock downs that have occurred within
24 the facility as well as the limitations on ability to
25 communicate with not only family and friends, but counsel and

1 just the general lack of conditions in terms of food, heating
2 and everything that inmates have experienced at the MDC.

3 And numerous judges as we cited in our sentencing
4 submission, have found that an appropriate reason for a
5 downward variance.

6 I think it's also important to look going forward
7 because what we've also seen is that the Bureau of Prisons is
8 now responding to various incidents with nationwide lock
9 downs.

10 I think the court may be aware that there was
11 recently an incident in Texas where two inmates were killed
12 and as a result, the bureau of prisons locked down the entire
13 country nationwide without exploring whether there was an
14 individualized threat at each facility.

15 The reason I point this out, is I think it tells
16 you what Mr. Lopez is likely to experience in the next
17 decades of his life in prison.

18 I don't think, although we hope to be out of the
19 woods in terms of the pandemic, I think it's likely that Mr.
20 Lopez will experience similar conditions wherever he gets
21 designated at various intervals throughout his incarceration.

22 I think the Dostoevsky quote is important for
23 another reason also, is I think it also instructs the court
24 that no matter how heinous the crime, no matter how horrible
25 the conduct, we still have to consider the individual and we

1 still have to -- prisons shouldn't be designed to torture
2 somebody, to hold them in inhumane conditions.

3 And I think for a man Mr. Lopez's age with his type
4 of conviction, sending him to a maximum security federal
5 penitentiary, may actually be that kind of treatment.

6 So for all of those reasons, we would ask the court
7 to consider sentencing Mr. Lopez downwardly varying and
8 sentencing Mr. Lopez to what it sees fit or what we're
9 constrained to ask for, which is 25 years as an aggregate
10 sentence.

11 THE COURT: Thank you. Two questions for the
12 defense.

13 First, what was the legal reason -- the legal basis
14 for vacating the plea in state court?

15 MS. GELERNT: So the legal basis was that Mr. Lopez
16 had actually already been indicted here at the time of his
17 plea in state court. He -- the prosecutor in Queens was
18 actually thanked in a press release here when the indictment
19 was obtained and his lawyer in the state never advised him
20 that he'd been indicted and he was never told that there were
21 other charges pending. And based on that, my understanding
22 is that the district attorney agreed to allow him to vacate
23 his sentence. It was also --

24 THE COURT: On something like the basis that the
25 plea was not knowing and voluntary in the state court?

1 MS. GELERNT: Yes. I mean my position when I saw
2 that was that he had received ineffective assistance of
3 counsel.

4 THE COURT: Right.

5 MS. GELERNT: And I don't have -- I had the
6 document indicating that it was vacated and my understanding
7 is that the parties agreed to vacate the plea in advance of
8 an evidentiary hearing so I don't know whether it was
9 explored, you know, what obligation the Queens prosecutor had
10 to acknowledge that there were other charges pending at the
11 time that the plea was entered. But I think, it's my
12 understanding that the parties agreed that it would be
13 appropriate to vacate that plea.

14 It's also my understanding that there is an overlap
15 of victims in this case and the charge of conviction there.
16 So -- and I think there was also an understanding at the time
17 that they agreed to vacate the plea, that Mr. Lopez would be
18 pleading guilty here and what type of sentencing he was
19 facing in this case.

20 And as we informed the court, it certainly had
21 impact on this case in terms of the mandatory minimums and
22 maximums for each crime and also if Mr. Lopez had gone to
23 trial, how that conviction could have been used in this case.
24 But that's something we didn't end up having to address.

25 THE COURT: And then my last question is, you're

1 telling me that even if Mr. Lopez is to be incarcerated for
2 what is effectively the remainder of his life, the number of
3 years incarceration will still matter to the designation to a
4 maximum security prison, a medium security prison or
5 otherwise.

6 And that I think I heard you say that if we
7 sentence the 280 years, he'll be in maximum security
8 indefinitely.

9 If we sentence him to 25 or something like what
10 you're asking for, he would be likely to step down, I think
11 you said, from maximum to medium at some point. I'm not
12 suggesting that I think this factor should carry the day at
13 all.

14 Obviously, there are aggravating and mitigating
15 factors here and some of the aggravating factors we'll talk
16 about in a moment, are extraordinary in many ways, but I just
17 want to make sure I understand mechanically what the -- so is
18 the -- if the step down is not something a defendant is
19 eligible for until 20 years or fewer remain on the sentence,
20 I take it the formula I should be working with is, take
21 whatever sentence is imposed and subtract 20 and if the
22 remaining number exceeds Mr. Lopez's life expectancy, then
23 that would be essentially a sentence to maximum security for
24 the remainder of his life. Is that --

25 MS. GELERT: If I'm following Your Honor's math, I

1 apologize. So my understanding from reading and reviewing
2 the BOP regulations, is that because Mr. Lopez is a
3 deportable non-citizen, which likely -- he was a legal
4 permanent resident and he's a Columbian citizen. So it's
5 clear that based on the nature of these convictions, he's --

6 THE COURT: Deportable.

7 MS. GELERNT: -- deportable. So my reading of the
8 bureau of prisons regulation, is that he's not eligible for a
9 waiver because of that and so individuals with 30 years
10 remaining on their sentence, have -- 30 or more remaining on
11 their sentence, have to be in a high security. Between 20
12 and 30, it's medium and then under 20 they can get stepped
13 down.

14 THE COURT: I see.

15 MS. GELERNT: And it apparently from the bureau of
16 prisons regulations, there is -- if you're not eligible for a
17 waiver, which the non -- the deportable non-citizen isn't,
18 then there is no way to get out from under that. And that's
19 based on their published regulations which I believe I cited
20 to the court.

21 So and I -- you know, and I guess the court started
22 to address what are the aggravating factors in this case and
23 in some ways I suppose I should touch on this.

24 We've been very circumspect in terms of not wanting
25 to lay any of the blame or causation on factors in Mr.

1 Lopez's life.

2 I think we directed the court to certain things
3 that happened to Mr. Lopez's life in terms of his
4 victimization both by his father in terms of physical abuse,
5 and by a very brutal incident of sexual abuse early in his
6 life.

7 I sort of felt that I didn't want to spend too much
8 time on those issues because I didn't think that in assessing
9 the appropriate sentence, that could nearly rise to the level
10 to explain the conduct and I wanted to make it clear that
11 neither myself nor Mr. Lopez really, were in any way trying
12 to excuse his conduct or negate the seriousness of the
13 conduct.

14 And so for that reason I also didn't submit letters
15 on his behalf from his family which really could be viewed by
16 the court as self-serving or failing to understand the harm
17 that he had caused.

18 I also think that to the extent that his family
19 sees him differently and that maintain a close relationship,
20 I think one of the insidious natures of this crime that I'm
21 sure the court will touch on and the government will touch
22 on, is it's that type of duality that allows somebody to
23 commit this type of crime, that allows them to gain trust.

24 And so I really wanted to focus on what I thought
25 were the important issues that I think the court still has to

1 consider. Although the crime is horrible, although there can
2 be no excuse for Mr. Lopez's conduct.

3 So I think the court is still directed to think of
4 yes, Mr. Lopez may need to be incapacitated by this sentence.
5 He certain needs and should be punished by this sentence, but
6 it doesn't mean that the punishment should be inhumane which
7 I think sentencing him to a term of 100 years would result in
8 something that ultimately was inhumane and not worthy of the
9 type of punishment and consideration that we think of for
10 somebody of Mr. Lopez's age who will pose no danger while in
11 custody.

12 THE COURT: Thank you. Ms. Hajjar, do you want to
13 be heard?

14 MS. HAJJAR: Thank you, Your Honor, yes.

15 The government is asking that the court impose an
16 effective sentence of life imprisonment in this case.

17 The guidelines in this case are as we've noted, a
18 base offense level of 51 which is literally off the charts of
19 the sentencing guidelines. And that is really because the
20 crimes here are among the most serious under the law and are
21 recognized as such.

22 I'm not going to describe the offense conduct in
23 detail because I know Your Honor has read the government's
24 sentencing memorandum and it is set forth in detail there,
25 but this case is extraordinary in terms of the age of the

1 victims that were abused, the length of time in which the
2 abuse took place, the nature of the sexual acts that were
3 depicted in the child pornography that the defendant created,
4 and the number of children abused.

5 This is really the worst of the worst. It is the
6 worst case that certainly that Special Agent Steeva has seen
7 in his career at the FBI and I as a prosecutor. It is
8 extraordinary in terms of the length of time and the age of
9 the victims.

10 The defendant pled guilty to nine counts related to
11 the sexual exploitation of at least eight different victims,
12 but as the PSR notes, law enforcement seized over 13,000
13 files of child pornography depicting at least 28 different
14 victims. The abuse took place over a decade and some of the
15 victims the defendant abused, that abuse began shortly after
16 their birth as infants.

17 As Your Honor knows, the government has been in
18 contact with the families of the victims in this case. Some
19 have indicated they will not be attending the sentencing
20 because of the emotional toll and trauma that this case has
21 caused, but asked me to convey to the court the devastation
22 of the defendant's actions have caused them and their
23 children.

24 Child rape especially the prolonged abuse over
25 years that the defendant engaged in here, has unimaginable

1 impacts on a child.

2 It can destroy families and have long-standing
3 consequences on the child's development, the child's ability
4 to develop relationships in the future, their understanding
5 of trust, and in every sort of facet of their lives going
6 forward and not just the child, but the child's family as
7 well.

8 In particular the family member of additional
9 victims one and two have asked that I read a portion of the
10 victim impact statement, the lengthy statement that was
11 provided to the court and ask that I read it on their behalf.
12 May I do so?

13 THE COURT: Yes.

14 MS. HAJJAR: I'll refer to additional victim two as
15 Jane Doe just for the purposes of the statement.

16 Jane Doe's abuse started as a little girl and it
17 had just come to the attention of her father in February of
18 2021.

19 It took immense courage on Jane Doe's behalf to
20 come clean to her father about the tormenting secret she'd
21 been living with for years. She described in detail the
22 abuse she had to face by this monster, Orlando Lopez.

23 Her father had no choice but to be strong for his
24 daughter, but the days following the information he found out
25 were grim beyond belief. He was sick to his stomach for

1 days, vomiting uncontrollably, physically sick.

2 Her father blames himself for not being able to be
3 home to protect his daughter while he was working trying to
4 provide for his family. He says if he was present at this
5 time, this wouldn't have happened to Jane Doe.

6 Since finding out the news, her father deals with
7 enormous guilt haunting him every single day. He still
8 struggles with unanswered questions, doubts, a lot of
9 information that will always be debatable.

10 Her father has not been able to return to a stable
11 full time job as he feels it's important he never leaves Jane
12 Doe's side. This has put a huge financial stress on the
13 family.

14 Every month we are struggling with bills because
15 her father has never been the same and will never been the
16 same. While this information has created an unbreakable bond
17 between the two, it is something that he has not been able to
18 recuperate from.

19 The beginning of 2021 was a life-changing year for
20 our entire family as we had to move out of the state to New
21 Jersey because Jane Doe could not stand being in the same
22 apartment where the abuse occurred.

23 She describes being in the same bedroom where
24 Orlando would sexually abuse her and describes seeing this
25 monster in her nightmares every single night. Jane Doe

1 needed a complete change of environment as she was also
2 experiencing trouble in school because of these events.

3 Jane Doe blamed herself for letting the abuse
4 continue for almost a year until her therapist and father
5 explained to her numerous times this was not her fault.

6 Jane Doe lives with the guilt of the other children
7 who were molested because she feels that if she had said
8 something sooner, she could have avoided the trauma others
9 are living with as well.

10 I personally almost lost my job because I had to be
11 in constant support for Jane Doe's father and Jane Doe. I
12 had to calling out or coming in late because of all the
13 appointments Jane Doe had to attend to help her reach a
14 standard level of security for her everyday living.

15 It's unfortunate that any little girl must deal
16 with the overwhelming emotional stress due to the disgusting,
17 sickening acts of an elderly man who deserves to rot in
18 prison for the rest of his life. It is unimaginable that a
19 repelling man's nauseating urges has caused irreversible,
20 irreparable, everlasting damage to our entire family.

21 He had his moments of pleasure while our little
22 girl is stained for the rest of her life. Trauma we must
23 carry throughout our family including her younger siblings
24 over these life-changing events that no child should ever
25 have to deal with. This monster does not have any idea of

1 the damage he has caused.

2 That's just an excerpt, Your Honor. I know Your
3 Honor has the full victim impact statement which was also
4 quoted in the government's sentencing memorandum along with
5 several other victim impact statements.

6 And I think what these impact statements make clear
7 is that these victims and their families will be carrying the
8 damage of this abuse with them for the rest of their lives.

9 I'll just briefly address some of the points Ms.
10 Gelernt made today.

11 None of the factors Ms. Gelernt mentioned are truly
12 mitigating factors in the sense that they warrant any kind of
13 downward departure from the guidelines in this case in the
14 government's view.

15 First of all, there's nothing extraordinary about
16 the defendant's acceptance of responsibility in this case.
17 The plea agreement in this case was negotiated over a period
18 of months.

19 As part of the plea agreement, the defendant did
20 not plead guilty to count 1 which is the most significant
21 count which carried a 30 year mandatory minimum.

22 The government agreed to this plea agreement -- to
23 a plea agreement that did not carry a plead to the top count
24 in order to spare victims the trauma of having to go through
25 a trial in which their testimony would be necessary.

1 But the defendant's plea of guilty is not an
2 extraordinary acceptance of responsibility beyond the
3 acceptance of responsibility that's attended to every plea of
4 guilty before Your Honor.

5 Of course it saves the government resources in
6 terms of having to have a trial and it spares victims from
7 having to testify at trial, but that's no different from any
8 other plea of guilty. This is not a situation where we're
9 talking about a cooperator.

10 This is not a situation in which the defendant came
11 forward before charges were brought and negotiated a plea to
12 an information or anything like that.

13 This was a run of the mill plea negotiation where,
14 of course, the government -- there were certain severe counts
15 the government did not ask the defendant to plead guilty to
16 as a result of the plea agreement. Yes, and the government
17 negotiated that the defense would not seek a sentence below
18 25 years as part of that negotiation. But again, none of
19 this takes it outside the scope of the ordinary in terms of
20 acceptance of responsibility.

21 THE COURT: Can I just get your views of the
22 institutional dynamics that Ms. Gelernt invoked. I mean, I
23 understood her analogy, such as it was, to the 5K context to
24 be a suggestion that there's some degree here to which
25 leniency might be in the government's interest, the

1 prosecution's interest in the sense that when you have a
2 defendant who is, you know, subject to life incarceration
3 before the guilty plea and still subject to life imprisonment
4 under the guidelines after the guilty plea, right?

5 The three points for acceptance of responsibility
6 are a rounding error or less in this case, that there's very
7 little incentive to plead, right?

8 And that therefore the nature sort of path of least
9 resistance for similarly situated defendants, might be to put
10 the system to the burden of a trial and more -- much more
11 importantly to put the victims through the secondary harm
12 that that might entail.

13 I'm not pushing you on this one way or the other at
14 all, I'm just asking institutionally, do you think there's
15 anything to that view or do you disagree entirely?

16 MS. HAJJAR: I think the incentives become
17 complicated for defendant's where a defendant is facing a
18 life sentence.

19 However, this is different from a murder trial in
20 terms of the costs of the defendant himself from going
21 through a trial like this and the attendant publicity.

22 I would say there are -- there is incentives and
23 there's value for the defendant as well in terms of ending
24 and resolving this case quickly and moving to sentencing.

25 Of course, having -- not having sitting through the

1 testimony of small children that he has abused for 10 years,
2 I think there is value to a defendant in avoiding that.

3 That may not be the case for every defendant and I
4 certainly, I don't think I've thought enough about this in
5 terms of institutionally for every defendant, but certainly I
6 think there is value on both sides for a quick resolution.
7 It wasn't quite quick in this case, but it was negotiated and
8 I think it was in the interest of both parties to resolve it
9 this way.

10 THE COURT: That's helpful. Thank you.

11 MS. HAJJAR: With respect to a few other things
12 that Ms. Gelernt mentioned, I don't think from the
13 government's perspective, the BOP regulations or designations
14 should play any part in the court's determination of the 3553
15 act factors.

16 And in terms of the defendant's age, I know Ms.
17 Gelernt has mentioned a number of times that the defendant is
18 66 years old now.

19 I'll just note Your Honor, that this is not a crime
20 -- the nature of this crime is not one for which advanced age
21 incapacitates the defendant from continuing to commit these
22 types of crimes in the future.

23 The defendant was 52 years old when he first
24 started sexually abusing Jane Doe two who was an infant at
25 the time. He was 63 years old when he took Jane Doe one to

1 New Jersey in order to abuse her. That was in 2018. The
2 defendant's age clearly has not prevented him from committing
3 crimes, far from it.

4 If the defendant had not been arrested, he would be
5 committing the same crimes today and tomorrow and in the
6 perceivable future. The defendant's advancing age has
7 clearly not had an impact or has not incapacitated him from
8 committing the crimes in this case. And so in the
9 government's view, a sentence of life imprisonment, an
10 effective life imprisonment is necessary and warranted under
11 the 3553(a) factors to ensure the safety of the community and
12 to provide just punishment in this case.

13 THE COURT: Thank you. Just one more question.
14 How old, if you know, is the oldest victim now?

15 MS. HAJJAR: Right now?

16 THE COURT: Is anybody -- my question more broadly
17 is just are any of the victims here even close at this point
18 to the age of majority?

19 MS. HAJJAR: No.

20 THE COURT: Okay. And I ask the question just to -
21 -

22 MS. HAJJAR: I'm sorry. I just want to -- I'm
23 sorry. Just in response to Your Honor's question, all --
24 none of the victims are close to the age of majority.

25 THE COURT: Yeah. The context for my question is

1 the realization, maybe a belated realization on my part, that
2 in addition to the many other ways, the so many other ways,
3 that you know, child exploitation is different from
4 commensury conduct with adults.

5 One of them is that victims lose the opportunity
6 that the system tries to accord other victims to participate
7 in the proceedings in some meaningful way to be heard in
8 these proceedings, in some meaningful way they're just too
9 young still to be expected to even fully understand what's
10 going on here, let alone participate in any meaningful way.

11 And we've seen cases involving adults in this
12 courthouse in recent years, high profile cases involving
13 sexual assault, maybe in which you've also been the
14 prosecutor, I'm not sure.

15 But I just -- you know, as a spectator to those
16 cases I think it's fair to say that a judge does not need a
17 PhD in psychology to observe that there's a reason why the
18 system tries to accord victims the rights that it does, to be
19 heard in these proceedings because there is some, however
20 small, some cathartic affect potentially associated with
21 being able to speak on one's behalf and that's obviously --
22 that's not present here in the same way.

23 MS. HAJJAR: And I'll just add, Your Honor if I
24 could, that one thing I didn't mention in my remarks is that
25 some of this child pornography has also been distributed.

1 Some of the pornography the defendant created.

2 And while maybe the distribution of that
3 pornography pales in comparison to the act of child rape
4 which is in terms of the harm to the victim, the knowledge of
5 the distribution of child pornography, the fact that one's
6 images and videos of these horrible moments are shared with
7 other individuals.

8 In at least in my experience having seen victim
9 impact statements of children who have grown up without
10 understanding in that realization that there's been a market
11 made of their -- of images of their exploitation and the harm
12 and recurring harm that that causes, it is extraordinary and
13 just cannot be put into words.

14 And so I note that too that it's not simply the
15 harm looking backwards, but prospective harm as a result of
16 the distribution of images created of these children's
17 exploitation and abuse.

18 THE COURT: Yes. Thank you. Ms. Gelernt, I'm
19 going to, at this point, offer Mr. Lopez of course, the
20 opportunity to speak on his own behalf. We can do that
21 either straight away or if you want a five minute break, we
22 can do that too.

23 MS. GELERNT: I believe he has a prepared written
24 statement that he's written in Spanish and I've provided the
25 interpreter with a copy so that he can follow along and

1 translate more fluidly.

2 And just to briefly respond to one of the questions
3 that the court asked of the government about whether a
4 defendant facing life sentence before the plea and after the
5 plea would have an incentive to plead, I think the court
6 phrased the issue perhaps more succinctly and eloquently than
7 I tried to in my remarks.

8 But I would also add it's not only for the
9 defendant making the decision. It's defense counsel. So the
10 effect on defense counsel trying to advise clients in the
11 future, whether there's any benefit to pleading, is also
12 implicated by the sentence that the court imposes.

13 THE COURT: Understood. Can we just make sure
14 before we begin that the microphone is close to hand for Mr.
15 Lopez and more importantly, actually, the interpreter.

16 MS. GELERNT: Oh, yeah, that's true.

17 THE DEFENDANT: Can you hear me? Your Honor, I
18 would like to apologize to the government of the United
19 States and especially to the City of New York for my shameful
20 acts.

21 I deeply regret the harm, pain and suffering that I
22 caused to these children and to their families. The
23 suffering and the hardships that I suffered during my
24 childhood do not justify the harm that I've caused them with
25 my horrible acts and I am deeply sorry for having betrayed

1 the trust that the parents of these poor children put on me.

2 I am also sorry for the pain and suffering and
3 shame that I've caused to my own family. In taking the
4 decision to plead guilty and to take responsibility for my
5 criminal actions, I hope that I can rid these children and
6 their families of the pain and suffering that they would
7 suffer during a public trial.

8 I do understand that there is nothing that I can
9 say or do that could repair or erase the pain that I've
10 caused, but I hope that my sentence would bring some sense of
11 closure to the victims and to their families. With all due
12 respect, Your Honor, Orlando Lopez. Thank you.

13 THE COURT: Thank you. All right. At this point I
14 will take a ten or maybe even slightly longer minute break
15 and we will reconvene shortly.

16 (Court in recess from 4:01 p.m. until 4:14 p.m.)

17 THE COURT: Please be seated. Are we ready to
18 proceed?

19 MS. HAJJAR: Yes, Your Honor.

20 MS. GELERNT: Yes, Your Honor.

21 THE COURT: Okay. We're back on the record after a
22 short break that I've used just to collect my thoughts on the
23 arguments from the parties and the statement from the
24 defendant.

25 I've adopted the pre-sentence report in it's

1 entirety. I've reviewed and considered the sentencing
2 guidelines in this case. I've also considered extensively
3 the relevant factors set out by the United States Congress at
4 18 U.S. Code, Section 3553(a), which include the advisory
5 guidelines range.

6 In order to ensure that I impose a sentence that is
7 sufficient but not greater than necessary to comply with the
8 purposes of sentencing, which in this and every case include
9 the need for the sentence to reflect the seriousness of the
10 crime, to promote respect for the law, to provide just
11 punishment for the offense, and to deter criminal conduct by
12 Mr. Lopez specifically, and also by other individuals who
13 might seek to engage in this type of crime.

14 I've also, of course, considered the nature and
15 circumstances of the offense conduct in this case and the
16 history and characteristics of the defendant.

17 And just to summarize where the various sentencing
18 data points and recommendations are in this case, the
19 statutory maximum in the aggregate as the defense has pointed
20 out is 280 years in jail. That's 30 years for each of the
21 nine sexual exploitation counts and ten years for the child
22 pornography conviction.

23 The plea agreement between the parties projected
24 the guidelines at life imprisonment and the government seeks
25 a guidelines sentence. The defense has requested a sentence

1 of 300 months or 25 years or such a sentence as the court
2 might otherwise find appropriate and the United States
3 Probation Department has recommended a total of 50 years
4 consecutive incarceration for Mr. Lopez.

5 As I looked through my notes moments ago, I was
6 struck that much of what I've written down here is repetitive
7 of arguments the government has made and in many cases
8 repetitive of acknowledgments the defense has made about the
9 severity of the criminal conduct at issue here. But I think
10 it's worth, given the extraordinary nature of this course of
11 conduct, acknowledgment by me nevertheless.

12 And I start with some quantitative observations as
13 the government did. I observed that the number of children
14 involved in this case is high, exceptionally high. Not just
15 the victims referenced by name or pseudonym in the
16 indictment, but also as indicated by the pre-sentence report
17 at paragraph 23, it is the case that forensic analysis of the
18 defendant's devices showed that he produced, if I understand
19 this correctly, child pornography depicting at least 28
20 victims, only 15 of whom have been identified.

21 MS. HAJJAR: That's correct, Your Honor.

22 THE COURT: So that prompts for me the
23 extraordinary realization that there may be a large number of
24 children out there who were abused by Mr. Lopez, and as to
25 whom no adult in the world other than Mr. Lopez himself, is

1 aware of the abuse, so that any opportunity that an adult
2 might have to deal with the victimization of those children
3 as best they could through therapy or otherwise, we simply
4 don't know who knows what and to what degree those children
5 have any adult in their life with whom they're in
6 conversation about this conduct.

7 The pre-sentence report notes as to the additional
8 victims that they cannot be grouped under the sentencing
9 guidelines or considered relevant conduct and, therefore, to
10 the extent we're talking about the guidelines, which we're
11 really not here given the life range, that would be a basis
12 for an upward departure under the guidelines if anything.

13 The number of images in this case is extraordinary.
14 There were 13,000 files recovered from the defendant's
15 premises that the government believes were produced by the
16 defendant and that's separate and apart from other images he
17 downloaded, what the pre-sentence report is calling the
18 commercial images.

19 Do I have that number correct?

20 MS. HAJJAR: That's correct, Your Honor.

21 THE COURT: That's an extraordinary number of
22 files, it should go without saying. More importantly than
23 the numbers is, of course, the content of the images.

24 And the content of the images has been described at
25 some length in the pre-sentence report and in the

1 government's submission and somewhat more obliquely here
2 today on the record.

3 I don't want to go into too much detail here in
4 court, but given that we're making a record for posterity
5 here, including perhaps a record that will be read by victims
6 themselves one day, I think it's important for the record to
7 reflect that all of us here in this courtroom today were
8 aware, especially the advocates and the decision maker in
9 this courtroom here today, were aware of the extent and
10 severity of the sexual exploitation activity at issue here
11 today.

12 Suffice it to say in that respect that we are
13 talking about extraordinarily graphic depictions of Mr. Lopez
14 performing sexual acts on children and forcing them to do so
15 on him.

16 And so that we are crystal clear about that, we are
17 talking, as the government acknowledged, about the outright
18 rape of children among other things.

19 In some cases the victims were forced by Mr. Lopez
20 to perform these acts not only with him, but with other
21 children including at times siblings.

22 I'll stop there, but the narrative recitation of
23 what we're dealing with in these images, there are not really
24 words to describe other to invoke trite phrases like it
25 shocks the conscience. It genuinely does shock the

1 conscience.

2 And then there's the duration of the scheme. The
3 earliest victims identified in this case date back to 2011.
4 I don't think anybody sitting in this room other than Mr.
5 Lopez knows with confidence whether and how much earlier the
6 type of conduct we are talking about here predates the
7 conduct described in the indictment.

8 I've only been a judge in this courthouse for two
9 years now and in that -- even in that short period of time,
10 I've seen a lot of the darker side of humanity as we do in
11 federal courts, but this case is in a category of its own.
12 The suffering and the corresponding loss of innocence to
13 these child victims are incalculable.

14 There is no way that I can articulate that better
15 than the victim statements do. They speak to the depression
16 that these child victims are living with, the fear, the loss
17 of self-esteem, the inability to enjoy everyday life, the
18 obstacles to physical and emotional intimacy with which these
19 victims will have to struggle forever. The nightmares, the
20 body image issues.

21 One victim was said by her guardian to be disgusted
22 by her own body and I think we can all acknowledge that she
23 is describing a particularly excruciating kind of torture
24 that in all likelihood will endure for that victim long after
25 Mr. Lopez is gone from this earth.

1 The guilt that one victim described that if she had
2 spoken up sooner, other victims might not have been harmed.
3 And ultimately the suicidal ideation and just imagine that
4 for a second. That we're talking here about conduct that
5 caused a child so much suffering that she would prefer to be
6 dead than alive.

7 There are secondary consequences to others beyond
8 the immediate victims as the government also pointed out.
9 Obviously most notably, the parents. They have to struggle
10 with their own guilt for things so ordinary as leaving a
11 child to go to work. And more than one parent described on-
12 going problems of their own in getting and maintaining work
13 given what they feel to be the persistent need to be near
14 their children every day now.

15 So that's the aggravating factors. As in every
16 case, every criminal case in every courthouse anywhere in the
17 world there are factors to be weighed on the other side of
18 the scale. And defense counsel has articulated them.

19 It is true that Mr. Lopez accepted responsibility
20 relatively early on in these proceedings and that he did
21 spare the victims the burden of sitting through a trial or
22 otherwise getting engaged.

23 The record doesn't really reveal much, it seems to
24 me, in the way of alternative paths given the video and
25 documentary evidence. It's not really obvious that Mr. Lopez

1 had much of an alternative but to plead guilty, but still the
2 decision to spare the victims a trial does count for
3 something.

4 Perhaps more importantly, and I know defense
5 counsel didn't want to get into this at long length, but I do
6 want to note that Mr. Lopez recounts in the defense
7 submission being the victim of sexual abuse himself as a
8 child at the hands of a man that the defense has identified
9 as a friend of the defendant's father.

10 Mr. Lopez also recounts being physically abused by
11 his father when he spoke up about this incident. And I do
12 not -- I want to make clear, I do not discount the potential
13 horror of that or the precipitating role that it may -- may
14 have played in the broader conduct at issue here.

15 But it simply does not in any way for the most
16 obvious reasons excuse the conduct at issue here. And given
17 the aggravating factors that I've described, it is hard to
18 see what substantial role, if any, that history can play at
19 sentencing in light of the 3553(a) factors that I've
20 described.

21 At this point in his life, simply put, Mr. Lopez
22 has revealed himself through his conduct, to be the person
23 who he is and the record reveals absolutely no indication
24 that he sought help for the, you know, what the defense has
25 described as the mental health overlay in this case.

1 But putting all that aside, the need for deterrents
2 in this case, both specific deterrents and general
3 deterrents, compel me -- compel me, I believe, to ensure that
4 Mr. Lopez will serve what will effectively be in the
5 aggregate a life sentence regardless of how long he lives.

6 I am sensitive to the designation issues raised by
7 the defense. I asked the follow up question that I did about
8 where the dividing line might be between a sentence that
9 would render him eligible perhaps for a step down in security
10 designation and the sentences that would not.

11 But I conclude having heard what we've heard about
12 that, that the conduct in this case simply places us too far
13 from that borderline, whatever it might be, to merit taking
14 that into account in a dispositive way in this case.

15 And so having said all that and after assessing the
16 particular facts of this case and in light of the relevant
17 Section 3553(a) factors, I sentence Mr. Lopez to the
18 following: 25 years in the custody of the attorney general
19 on each of counts 2, 4, 5 and 6, to run concurrently to one
20 another and 25 years on each of counts 7, 8, 9, 10, and 11,
21 that later group of counts to run concurrently to one
22 another, but consecutively to counts 2, 4, 5 and 6, the first
23 grouping of counts.

24 And I also sentence Mr. Lopez to five years on
25 count 12, the child pornography count to run consecutively to

1 all of the other counts in this case.

2 I agree with the government that that creation and
3 distribution of the child pornography images of the victims
4 here is a separate harm and one that will continue to impact
5 the lives of the victims here long after the sexual abuse in
6 this case is, you know, the dates of the sexual abuse are in
7 the past.

8 So by my calculation when you look at what -- which
9 terms of imprisonment that I just mentioned on which counts
10 run consecutively to which others, you end up with a total of
11 55 years of incarceration.

12 Does the government have any questions about the
13 calculations that I've just made?

14 MS. HAJJAR: No, Your Honor.

15 THE COURT: Does the Probation Department?

16 THE PROBATION DEPARTMENT: No, Thank you, Your
17 Honor.

18 THE COURT: Does the defense have any mechanical
19 calculations just about how that works?

20 MS. GELERNT: I don't have mechanical calculations
21 about how that works, Judge.

22 The only thing that I would add is that because of
23 the nature of Mr. Lopez's custody on this case, and with the
24 sentence of 55 years, this is really not the most paramount
25 issue, but I would ask that the judgment indicate that it

1 began running from October 30th of 2019, so that he's
2 credited for all of the time he's actually served in on this
3 case.

4 THE COURT: I would have anticipated that that
5 would happen automatically, but --

6 MS. GELERNT: There are issues regarding who has
7 primary jurisdiction --

8 THE COURT: Oh, state versus -- okay.

9 MS. GELERNT: -- state jurisdiction, so I would
10 just ask that that date be reflected in the judgment.

11 THE COURT: Does the government have any objection
12 to that?

13 MS. HAJJAR: No, the government takes no view on
14 that.

15 THE COURT: Okay. So I'm sorry, say the date
16 again?

17 MS. HAJJAR: It's October 30th of 2019.

18 THE COURT: And that's the first day of state
19 custody in this case?

20 MS. HAJJAR: Yes, Your Honor.

21 THE COURT: Okay. The judgment will so indicate.
22 In terms of supervised release, I sentence Mr. Lopez to five
23 years of supervised release on each count all to run
24 concurrently to one another. He shall be subject to all
25 mandatory conditions of supervised release and too, the

1 following special conditions suggested by the probation
2 department. Just bear with me one second.

3 So pursuant to 18 U.S. Code, Section 4042(c), as in
4 Charlie, Mr. Lopez shall be subject to the sex offender
5 registration provisions in the United States Code.

6 He shall register and keep the registration current
7 in each jurisdiction where he resides, where he's employed,
8 or where he may be a student.

9 And for initial registration purposes only, he
10 shall register in the jurisdiction in which he is convicted
11 if that jurisdiction is different from the jurisdiction of
12 his residence. I don't believe that to be the case. Hold on
13 just one second.

14 MS. GELERNT: That is not the case, Your Honor.

15 THE COURT: Yeah. The defendant shall refrain from
16 contacting the victims of the offenses here. This means he
17 shall not attempt to meet in person, communicate by letter,
18 telephone, email, the internet, directly or indirectly,
19 including through any third party, without the advance
20 knowledge and written permission of the United States
21 Probation Department. No contact with the victims.

22 The defendant shall participate in mental health
23 treatment programming, which may include participation in a
24 treatment program for sexual disorders, as approved by the
25 Probation Department. Defendant shall contribute to the cost

1 of such services rendered and/or any psychotropic medications
2 prescribed to the degree that he is able and shall cooperate
3 in securing any applicable third party payment.

4 The defendant shall disclose all financial
5 information and documents to the Probation Department to
6 assess his ability to pay and as part of the treatment
7 program for sexual disorders, the defendant shall participate
8 in polygraph examinations and/or visual response testing to
9 obtain information necessary for risk management and
10 correctional treatment.

11 The defendant shall not associate with children
12 under the age of 18 unless a responsible adult is present and
13 the defendant has prior written approval from the probation
14 department.

15 Prior approval does not apply to contacts which are
16 not known in advance by the defendant where children are
17 accompanied by a parent or guardian or for incidental contact
18 in a public setting.

19 Any such non-pre-approved contact with children
20 must be reported to the Probation Department as soon as
21 practicable but no later than -- excuse me, than 12 hours
22 following such conduct -- such contact.

23 Upon commencing supervision, defendant shall
24 provide to the Probation Department the identity and contact
25 information regarding any family members or friends with

1 children under the age of 18 whom the defendant expects to
2 have routine contact with so that the parents or guardians of
3 these children may be contacted and the Probation Department
4 can approve routine family and social interactions such as
5 holidays and other family gatherings where such children are
6 present and supervised by parents or guardians without
7 individual approval of each such event.

8 If the defendant co-habitates with an individual
9 with who has minor children, the defendant shall inform that
10 other party of his prior criminal history concerning the sex
11 offenses of which he has been convicted.

12 Moreover, he will notify that party of his
13 prohibition on associating with any children under the age of
14 18 unless a responsible adult is present.

15 The defendant shall submit his person, property,
16 house, residence, vehicle, papers, and computers, as defined
17 in 18 U.S. Code, Section 1030(e)(1), other electronic
18 communications or data storage devices or media, or office,
19 to a search conducted by a United States Probation Officer.
20 Failure to submit to a search may be grounds for revocation
21 of release.

22 The defendant shall warn any other occupants that
23 the premises may be subject to searches pursuant to this
24 condition. An officer may conduct the search pursuant to
25 this condition only when reasonable suspicion exists that the

1 defendant has violated a condition of his supervision and
2 that the areas to be searched contain evidence of that
3 violation. Any such search must be conducted at a reasonable
4 time at in a reasonable manner.

5 As the next special condition, the defendant shall
6 cooperate with and abide by all instructions of immigration
7 authorities and if deported or excluded, the defendant may
8 not re-enter the United States illegally.

9 Does that cover the special conditions recommended
10 by the Probation Department?

11 THE PROBATION DEPARTMENT: It does, Your Honor.
12 Thank you.

13 THE COURT: Okay. Does the government have any
14 other requests in respect of special conditions?

15 MS. HAJJAR: No, thank you, Your Honor.

16 THE COURT: Okay. I do in addition to the special
17 conditions I've just indicated as conditions of supervised
18 release, order forfeiture in this case. I think I've already
19 executed a preliminary order of forfeiture?

20 MS. HAJJAR: That's correct, Your Honor. I have a
21 copy if you just want to pronounce it as final.

22 THE COURT: Is there any objection from the
23 defense?

24 MS. GELERNT: There's no objection, Your Honor.

25 THE COURT: Okay. Then I do now pronounce that

1 preliminary order of forfeiture to be final.

2 I will not impose a fine in this case because I
3 find based on the pre-sentence report, that Mr. Lopez lacks
4 the ability to pay a fine.

5 But I will impose restitution today in the amount
6 of \$24,000 total. And is there -- well, let me pronounce
7 this on the record so that the record is complete.

8 That restitution shall consist of \$3,000 each to
9 the victims who have been identified by the pseudonyms Erin
10 and Fiona, who are depicted in the series Blues Pink 1,
11 \$3,000 to Jane of the series Cinderblock Blue, \$3,000 to
12 Jenny of the series identified as Jenny, \$3,000 to Jessica
13 from the series identified as Jessica, \$3,000 to the victim
14 identified by the pseudonym Amy who is depicted in the series
15 identified as Misty, and \$3,000 to Raven, who is depicted in
16 the series Teal&Pinkprincess2, and \$3,000 for Tara who is
17 depicted in the series identified as Tara.

18 I will also, to the extent any other victims
19 deserving a restitution are identified, hear from the
20 government on the subject of restitution for 90 days from the
21 date, I believe, on which the judgment formally issues.

22 And I think the defense has indicated in the plea
23 agreement and again here today, that you consent to the order
24 of that restitution. Is that correct?

25 MS. GELERT: Yes, Your Honor.

1 THE COURT: Okay. I am obligated by law to impose
2 a special assessment of \$100 for each count of conviction and
3 I do so now.

4 I find that the sentence that I have just imposed
5 is sufficient, but not greater than necessary to comply with
6 the purposes of sentencing that we have discussed here today.

7 Does the government have a motion with respect to
8 any counts that you seek to dismiss?

9 MS. HAJJAR: Yes, Your Honor. The government now
10 moves to dismiss any open counts in the indictment.

11 THE COURT: Okay. I think that's count 1 and count
12 3 of the indictment and that motion is granted.

13 Mr. Lopez, let me advise you of your right to
14 appeal. You can appeal your conviction if you believe that
15 your guilty plea was somehow unlawful or involuntary or if
16 there is some other fundamental defect in the proceedings
17 that was not waived by your guilty plea.

18 And under some circumstances a defendant also has
19 the right to appeal his sentence. Any notice of appeal must
20 be filed within 14 days of the entry of judgment in this case
21 or within 14 days of the filing of a notice of appeal by the
22 government, whichever comes later.

23 If you request, the clerk of the court will prepare
24 and file a notice of appeal on your behalf and if you cannot
25 afford to pay the cost of an appeal, or for appellate

1 counsel, you have the right to apply for leave to appeal *in*
2 *forma pauperis*, which is a status pursuant to which the court
3 would waive the filing fee and on appeal, you would
4 potentially be eligible for court appointed counsel.

5 In terms of sealing, I think we discussed, but let
6 me just make clear on the record here, that I do order Court
7 Exhibit 1 sealed and covered by the sealing order that is
8 already in effect in this case subject to the discussion
9 we've had on the record today about the circumstances in
10 which the defense may share it with state -- with Mr. Lopez's
11 state court defense counsel.

12 Finally, I respectfully direct the court reporter
13 to produce a transcript of today's proceeding.

14 Ms. Hajjar, are there any other matters to resolve
15 in this case?

16 MS. HAJJAR: I don't believe so except that Officer
17 Fisher just wanted the record to be clear and I agree with
18 her that it's prudent to do so that the \$24,000 in
19 restitution that the court has imposed is specifically in
20 connection with count 12, which is the possession of child
21 pornography count and should the clerk's office have any
22 issues in terms of executing any monies that come in through
23 that, of course we have those addresses and will be able to
24 provide them to the clerk's office.

25 THE COURT: Yes, thank you for the clarification.

1 That restitution, the \$24,000 in restitution is indeed
2 ordered in connection with count 12, the child pornography
3 count. And yes, the clerk's office will have access if
4 needed to Court's Exhibit 1, though it remains under seal and
5 also of course can be in communication with the government as
6 necessary.

7 MS. HAJJAR: Thank you, Your Honor.

8 THE COURT: Ms. Gelernt, anything else?

9 MS. GELERNT: Your Honor, the only additional
10 matter is that we'd ask that the court recommend that Mr.
11 Lopez be designated to a facility as close to the New York
12 area as possible to facilitate family visitation.

13 And I would just state for the record that my
14 office will, should Mr. Lopez choose to file a notice of
15 appeal, it's our practice to file the notice on his behalf.

16 THE COURT: Okay. And yes, I do recommend to the
17 Bureau of Prisons that Mr. Lopez be designated to a facility
18 as close to New York City as possible. That recommendation
19 is not binding on them (coughing) -- excuse me, but I'd make
20 it for what it's worth.

21 All right. That concludes today's proceedings.
22 Hold on just one second.

23 So it's being helpfully pointed out to me that I
24 should set a schedule for the payment of restitution and that
25 the schedule shall be that Mr. Lopez is to pay \$25 per

1 quarter while he's incarcerated and employed or half of his
2 prison earnings, whichever number is greater, during the
3 period of his incarceration.

4 All right. With that we've concluded today's
5 proceedings. We're adjourned.

6 (Proceeding concluded at 4:49 p.m.)

7 I, CHRISTINE FIORE, court-approved transcriber
8 and certified electronic reporter and transcriber, certify
9 that the foregoing is a correct transcript from the official
10 electronic sound recording of the proceedings in the above-
11 entitled matter.

12
13 

14 _____ May 7, 2022

15 Christine Fiore, CERT-410

16 Transcriber

17

18

19

20

21

22

23

24

25